IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7709 OF 2005

Shri Uttam Rajaram Bhosale and Ors ..Petitioners

Vs.

Smt.Shashikala Dilip Bhosale & Ors. ..Respondents

Mr.P.S.Dani with Mr.A.M.Kulkarni for the petitioners

CORAM : S.U.KAMDAR, J
DATED : 21ST NOVEMBER, 2005

P.C.:

1. In the present proceedings which is arising out of revenue proceeding, petitioners have sought to delete the name of the parties who are brought on record on the basis of intestate succession on the ground that the petitioner is holder of registered will and his name should be brought on record.

2. The property originally belonged to one Rajaram Bhosale who has expired on 27.11.79. Subsequent to the death of the said Rajaram Bhosale, the names of the legal

heirs were brought on record in pursuance of section 149 of the Maharashtra Land Revenue Code. The petitioners have produced the registered will almost after 22 years and applied that his name should be brought on record and name of other legal heirs of deceased Rajaram Bhosale be deleted. It is an admitted position that the said will is yet not proved in any court of law as required under the provisions of Indian Succession Act, 1925 for the purpose of being effective and establishing the right of the petitioners under the said will.

3. However, the learned counsel for the petitioners has contended that as far as the will which has been produced by him is concerned by reading of the provisions of section 149 read with section 154 of the Maharashtra Land Revenue Code, he is entitled to bring his name on record and delete the name of other legal heirs which has been brought on record as far back as 1980 irrespective of the fact that will is proved in Civil Court or not. It has been further contended that will is a registered document and by virtue of proviso II of section 149 the Talathi was bound to accept the

registered will without the same being proved in Civil Court and delete the name of legal heirs which has ben introduced under the land record as far back as 1980. It is his case that after his name is brought on record if legal heirs desires, then they can challenge the will and if they succeed then their names can be brought on record.

4. The learned counsel has in support of the aforesaid contention relied upon the Judgment of the learned single Judge of this court in the case of Shrikant R.Sankanwar v.Krishna B.Naukudkar reported in the case of 2003(3) Bom.C.R.45 and has contended that the will is a registered document and thus covered by the proviso II of s.149 and in the light of s.154 of Land Revenue Code the name of the petitioners ought to have been brought on record by the authorities below.

5. I am not inclined to accept the aforesaid contention firstly because what is contemplated under the proviso II of s.149 is a registered document and it does not taken into its compass a registered will. A will to be valid and effective

has to be proved in a court of law and thus, til it is proved as per the provisions of Indian Succession Act. The will is not enforceable and does not give any right whatsoever in the property. A person merely by virtue of registration of will cannot claim right in the property and seek to add his name on the Land Revenue Record as a holder of land by deleting the names of the persons who are already on record on the basis of Intestate Succession. He is of course entitled to bring his name on record but only after will is proved as provided under the proviso of Indian Succession Act. The aforesaid judgment relied upon by the petitioner does not pertain to the case of a will and thus, not applicable on the facts and circumstances of the present case. There is no substance in the present case because the authorities have already held that the petitioner can move the application after establishing his right under the Registered will in Civil Court. Undoubtedly the revenue authorities are not empowered to determine the validity or otherwise of the said will and therefore the method adopted by the authorities is perfectly legal and valid. In

that view of the matter petition fails. Petition dismissed accordingly. No order as to costs.